II. STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS AND IMPLEMENTATION OF THE COMPETITIVE CHECKLIST

A. RESPONSES TO QUESTIONS POSED

CHECKLIST ITEM I: INTERCONNECTION

NYT has not made interconnection available on commercially reasonable terms and conditions for the following reasons: (1) line-side interconnection is effectively unavailable; (2) NYT has made trunk-side interconnection at the local switch effectively unavailable by forcing CLECs into one-way trunking arrangements; (3) capacity constraints at tandem switches and business decisions concerning the use of tandems have made interconnection at the tandem unavailable or have caused blocked calls; (4) NYT does not offer virtual collocation, and physical collocation is often unavailable or available only after long, commercially unreasonable delays; and (5) NYT does not provide full interconnection to its signaling networks because of lack of procedures concerning TCAP messages.

1. LINE-SIDE OF A LOCAL SWITCH

NYT has included line-side interconnection as a term in its SGAT. See SGAT § 4.4.1.2(C). In addition, certain NYT interconnection agreements contain provisions offering line-side "ports" that are provided pursuant to "applicable tariffs," and NYT has asserted that these terms also constitute line-side interconnection within the meaning of § 251(c)(2). See, e.g., Garzillo, Exhibit 1; MFS Agreement, §§ 9.3, 9.10.3.

Nevertheless, line-side interconnection is not actually being furnished by NYT and is not generally available. NYT's witnesses confirmed that NYT has no means of providing line-side interconnection. NYT stated that no CLEC has requested line-side interconnection. Tr. 43 (Garzillo). Moreover, NYT testified that, in NYT's view, line-side interconnection was "probably not a viable method for interconnection." Tr. 44 (Garzillo). If a CLEC wanted line-side interconnection, NYT stated that "we'd talk about it." Tr. 199 (Gansert). With respect to provisioning intervals, NYT indicated that "we would evolve to make it consistent on what we do on the trunk side" -- i.e., 60 business days for new and 30 business days for augmentation -- but "that's the best we can offer right now." Tr. 200 (Garzillo).

2. TRUNK-SIDE OF A LOCAL SWITCH

NYT does not offer interconnection at the trunk-side of a local switch on a general and commercially available basis today. To the extent such interconnection is provided, it is at rates, terms, and conditions that are not just, reasonable, and nondiscriminatory.

MCI reported that it has been requesting direct end-office trunks from NYT since October, but NYT refuses to provide such trunking until MCI has a finalized interconnection agreement with NYT. Tr. 70 (Marzullo). NYT's refusal is clear evidence that such interconnection is not "generally" or "commercially" available.

Moreover, TCG testified that, although TCG's contract with NYT has always provided for two-way direct end-office trunking between the parties, NYT has never implemented such trunking with TCG. Tr. 60 (Montano). Instead, NYT has always insisted on one-way trunking, and even today does not provide two-way trunking.[9] Further, although TCG has established one-way trunks connecting TCG's switches to NYT end-office switches, NYT has not reciprocated by establishing one-way trunks from the NYT switches to TCG's. As a result, TCG has been unable to obtain commercially viable interconnection with NYT at the trunk-side of the local switch. Tr. 60 (Montano).

TCG also testified that NYT's lack of performance is causing commercial and competitive harm. TCG stated that over the past several months, TCG has pressed the issue of implementing interconnection with NYT at the local switch, because of increasing capacity constraints associated with TCG's existing interconnection at NYT tandem switches. NYT, however, has told TCG that it does not know how to order such trunking from TCG, and has insisted that TCG order such trunks from NYT (using NYT's operations support systems at TCG's expense). Tr. 60-61 (Montano). See also Tr. 85-87 (Saltzman) (NYT cannot

[9]NYT witnesses repeatedly acknowledged that NYT does not provide two-way trunking today for CLECs. See, e.g., Tr. 215-16 (Garzillo); Tr. 172 (Butler) ("[w]e are working toward trying to do two-way trunks in the CLEC market").

provide two-way trunking to MFS, and NYT has delayed ordering trunking to carry calls from NYT to MFS).[10]

NYT did not contest these basic facts. Indeed, NYT admitted that "[w]e're just now evolving to where parties are looking at interconnecting their switch to our local switch." Tr. 45 (Garzillo). NYT added that "over time through joint planning and grooming plans we would hope that CLECs would" go to direct trunking between end-office switches instead of interconnecting at the tandem. Tr. 45-46 (Garzillo). Accordingly, NYT cannot claim that interconnection at the trunk-side of a local switch is commercially available on terms and conditions that are just, reasonable, and nondiscriminatory.[11]

3. TRUNK INTERCONNECTION POINTS FOR A TANDEM SWITCH

The record also demonstrates that interconnection at the tandem switch is not generally available on a commercial basis, nor is it provided on terms and conditions that are just, reasonable, and nondiscriminatory.

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[10]NYT states that an estimated 89,827 interconnection trunks have been installed and are in service. See NYT Responses to On-the-Record Requests, Transcript Request p. 187 (Butler) (filed April 14, 1997). As NYT admitted, however, these trunks are mostly pairs of one-way trunks. Tr. 195 (Garzillo) ("we're dealing in a one-way trunk environment, so it's trunking from NYNEX to a CLEC and then from a CLEC to NYNEX, total of 91,000. That's all the number . . . includes"). Moreover, NYT owns only about 52,000 of those trunks. Tr. 196 (Garzillo).

[11]As discussed in the next subsection, NYT's proposed provisioning intervals for trunk-side interconnection are also unreasonable and discriminatory.

a. NYT Refuses To Provide Interconnection At All Technically Feasible Points For Interim Number Portability.

First, NYNEX has refused to provide interconnection at the tandem to AT&T for interim number portability (Halloran, pp. 34-35), even though there is no debate that such interconnection is technically feasible. See Tr. 736 (Garzillo) ("I'm not going to argue that. It has technical viability"). NYT's refusal to provide such interconnection is discussed more fully under Checklist item XI, number portability.

b. Because Of Claimed Capacity Constraints, NYT Does Not Provide Interconnection At The Tandem Switch On Commercially Reasonable Terms.

As the record shows, moreover, CLECs have had numerous problems establishing interconnection with NYT at the tandem switch. For example, NYT apparently has not adequately anticipated the need for tandem switching, and as a result, CLECs are experiencing blocked calls due to capacity constraints. Tr. 71-72 (Marzullo); 60, 160 (Montano); 218 (Saltzman). CLEC witnesses indicated that blocking results in serious customer dissatisfaction and complaints, and that the customer frequently blames the CLEC, even though the cause of the blocking is congestion on the NYT tandem. Tr. 72 (Marzullo).[12] Indeed, NYT

[12]See also Tr. 192 (Garzillo) (NYT does not always tell the CLEC when calls to CLEC customers are being blocked "but we've been working towards the process of getting better . . . we're not totally clean. This is something we're evolving to. We do (continued...)

has refused to permit MCI to interconnect at the 37th Street tandem because of capacity constraints. Tr. 74 (Marzullo).[13]

c. NYT's Proposed Provisioning Intervals For Trunk-Side Interconnection Are Unreasonably Long.

NYT's proposed provisioning intervals for trunk-side interconnection are also unreasonably long, and NYT frequently does not meet even those intervals. NYT proposes to provide new trunking within 60 business days (3 calendar months), and augmentation within 30 days. Butler, ¶ 21. However, as NYT admitted, "the interconnection trunks, if you will, are the trunks that we provide to the [interexchange] carriers," and "that is done in 17 business days today." Tr. 127-28 (Butler). NYT has provided no valid reason why there should be any disparity between the intervals for CLECs and for IXCs. NYT attempted to explain the disparity by arguing that interconnection for IXCs (in contrast to CLECs) is typically between two well-established points. As a factual matter,

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[12](...continued)
notify where we can and sometimes we do miss based on the activity the CLEC has").

[13]In addition, obtaining interconnection at NYT's tandem switches is severely limited by NYT's "quiet periods" -- i.e., periods during which NYT is performing upgrades or other work on the switch so that no CLECs can obtain interconnection. MCI indicated that its ability to obtain interconnection at certain switches would be delayed for several months due to NYT's quiet periods. Indeed, NYT's refusal to provide MCI with direct end-office interconnection, coupled with its quiet period limitations on MCI's ability to interconnect at the tandem, effectively means that in many cases MCI cannot obtain trunk-side interconnection at all. Tr. 69-70 (Marzullo).

however, once a CLEC enters the market its points of interconnection "very quickly become physically known points," and indeed, for IXCs such points will probably be all of the same well-known points from which they interconnect today. Tr. 145 (Halloran).[14]

Although NYT's stated provisioning intervals are unreasonably long, several CLEC witnesses testified that NYT has frequently taken even longer to provision interconnection trunks. MFS, for example, indicated that it had experienced a long history of missed due dates for interconnection. Tr. 84, 218 (Saltzman); see also Tr. 161 (Kouroupas). MCI indicated that it had three orders that it submitted December 5 to augment trunking for which it still had not received a firm order commitment as of April 1 -- four months later. Tr. 150-51 (Marzullo). This has been partially confirmed by NYT, which states that, during the fourth quarter of 1996, there were 12 orders of less than 24 trunks for which the provisioning interval averaged 186 calendar days, and 28 orders of more than 24 trunks that averaged 190 calendar days. See NYT Responses to On-the-Record Requests, Transcript Request p. 187 (Butler) (filed April 14, 1997).

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[14]NYT also stated that it "does not have data concerning the 'intervals' to provision trunks for itself," because it is done on a design build basis. NYT Responses to On-the-Record Requests, Transcript Request p. 187 (Butler) (filed April 14, 1997). As AT&T witness Halloran stated, however, the proper analogy is not NYT's general planning forecast but the intervals when NYT has to extend its facilities on short notice to accommodate a new service or unexpected demand. Tr. 145 (Halloran).

Because NYT's interconnection intervals are so haphazard and unpredictable, it is very difficult for CLECs either to plan ahead or to meet unplanned-for demand. See Halloran, p. 4.

As was typically the case with NYT, NYT indicated that "we're dealing in a new world" and that "we'll evolve and move forward to improve upon those intervals." Tr. 131 (Garzillo). As of today, however, NYT cannot claim that it is providing trunk-side interconnection at the tandem switch in a commercially reasonable manner, or that the terms and conditions for such interconnection are just, reasonable and nondiscriminatory.

4. CENTRAL OFFICE CROSS-CONNECT POINTS

The record demonstrates that NYT does not offer interconnection at central office cross-connect points in many instances. NYT currently provides such interconnection only through physical collocation, and a number of CLECs testified they had substantial difficulties in obtaining physical collocation from NYT. But where physical collocation is not available, NYT admits it does not have the necessary procedures and processes in place to offer virtual collocation.

a. NYT Claims Physical Collocation Is Becoming Increasingly Unavailable Due To Space Limitations.

NYT states that it has always been "a physical company." Tr. 105 (Garzillo). NYT now claims, however, that CLECs are exhausting the space available for physical collocation

in NYT's central offices. See Tr. 101 (Garzillo) ("there are certain buildings that everybody wants to collocate in; there are many CLECs . . . it is not easy to build a building in Manhattan or actually expand a building"); see also Tr. 101 (Garzillo) ("Definitely understand 37th Street is definitely a problem. I think we ran out of our last space there."). For example, in September, MCI requested physical collocation in certain central offices, and NYT responded that there was insufficient space available in 15 of those offices. Marzullo, ¶ 14. Other CLECs, such as TCG, are also experiencing severe delays in obtaining physical collocation. Tr. 99-100 (Montano) (expansion in three central offices will each take eight months to a year).

b. NYT Does Not Currently Offer Or Provide Virtual Collocation.

The increasing unavailability of physical collocation is especially problematic because NYT does not currently provide virtual collocation. This Commission has ordered NYT to provide physical or virtual collocation at the carrier's option. AT&T Arbitration Order, pp. 49-51; see also 47 C.F.R. § 51.321(e). Notwithstanding these requirements, NYT did not "offer" virtual collocation until February 1997, when it filed its SGAT with the Commission. Tr. 29 (Garzillo); 102 (Garzillo). Although NYT has now agreed in principle to provide virtual collocation, NYT is at the beginning of what it concedes will be a long process for

developing virtual collocation into a commercially available offering.

Indeed, NYT repeatedly conceded that "we're still developing the methods and procedures" for ordering and provisioning virtual collocation. Tr. 183 (Garzillo); see, e.g., Tr. 30 (Butler) ("we're currently in the process of developing the methods and procedures to offer our virtual collocation"); 36 (virtual collocation is "totally new to us"). Moreover, NYT indicated that the process of developing these methods and procedures would take "a long time." Tr. 31 (Butler). As NYT's witnesses explained, developing a virtual collocation offering "would be the equivalent of us wanting to add a brand new product or a piece of equipment to our network which would take much longer than 76 business days for us normally . . . ." Tr. 35 (Butler).

This process will be even lengthier for CLECs that wish to use "non-standard equipment" -- i.e., equipment that is not included on NYT's list of approved equipment -- because NYT has insisted that virtual collocation using such equipment must be reviewed as part of the BFR process. Tr. 32 (Butler). NYT indicated that it was developing methods and procedures in the context of discussions with a single CLEC to provide virtual collocation, but this CLEC is requesting "non-standard" equipment, which in NYT's view requires the BFR process. Tr. 33-34 (Garzillo).

While one CLEC is apparently discussing virtual collocation with NYT, other CLECs have not been so fortunate. For example, the president of Manhattan Telecommunications Corporation testified that all of his attempts to set up discussions with NYT regarding interconnection have been ignored or rebuffed. Tr. 88-89 (Aranow). Indeed, he testified that his NYT account manager flatly told him the day before that "NYNEX does not offer virtual collocation," and the NYT employee "refused to address the issue any further." Tr. 89 (Aranow).

NYT has similarly refused to discuss virtual collocation with MCI. Tr. 65-66. After NYT refused physical collocation to MCI because of space limitations, by letter dated January 8, 1997, MCI requested virtual collocation for those offices, but "[t]o date, no details of schedule, process, components, or pricing have been furnished to MCI." Marzullo, ¶ 14.[15] NYT is apparently using the ongoing arbitration proceedings as an excuse not to deal with MCI on the issue. Tr. 181-82 (Garzillo).

These facts clearly show that CLECs cannot obtain virtual collocation from NYT today -- or any time soon. See Tr. 108-09 (NYT's "offer" of virtual collocation simply means that it is included in the SGAT, not that a CLEC "can come in and plug into it the next day"). Virtual collocation is becoming

[15]Indeed, NYT does not know the price it will charge for virtual collocation. Tr. 36 (Garzillo) ("This is an evolution from the standpoint of intervals as well as pricing."); see also id. at 113-14.

increasingly important; as CLECs are discovering, however, as long as virtual collocation is still in the planning stages (as it is now), there will be an increasing number of central offices where collocation is entirely unavailable.

c. NYT's Provisioning Intervals For Physical Collocation Are Commercially Unreasonable.

Physical collocation remains a problem, however, even where NYT has available space. AT&T has experienced long delays in obtaining collocation from NYT. See Halloran, pp. 6-8. MCI also indicated that it has applications for collocation that have been pending for over 60 days without any response, and its actual intervals for obtaining collocation from NYT have ranged from five months to nine months. See Marzullo, ¶ 15.

5. OUT-OF-BAND SIGNALING TRANSFER POINTS

NYT does not yet provide full access and interconnection to out-of-band signaling transfer points. In particular, NYT acknowledges that such interconnection includes the ability to pass Transaction Capabilities Application Part ("TCAP") messages between interconnecting parties. See Garzillo, ¶ 11. AT&T, however, has had considerable difficulty in obtaining the ability to exchange TCAP messages. See Halloran, pp. 36-39. In addition, TCG testified that it requested the ability to exchange TCAP messages in October 1996, but that NYT has not yet even responded to TCG's request. See Tr. 62-63 (Montano). These incidents demonstrate that full interconnection

to NYT's signalling network is not yet commercially available. See generally discussion under Checklist item X, access to signaling and databases.

6. POINTS OF ACCESS TO UNBUNDLED NETWORK ELEMENTS

Issues relating to interconnection for access to unbundled network elements are discussed in conjunction with specific network elements.

CHECKLIST ITEM II: NONDISCRIMINATORY ACCESS TO UNBUNDLED ELEMENTS

NYT Is Not Currently Providing Most Unbundled Network Elements To CLECs, And It Cannot Demonstrate That It Is Making Unbundled Elements Available On A Nondiscriminatory Basis.

The Act and the FCC's regulations require that NYT provide nondiscriminatory access to unbundled network elements at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. E.g., 47 U.S.C. §§ 251(c)(3), 271(c)(2)(B)(ii). NYT cannot satisfy these requirements, as most of the unbundled network elements -- including local switching capability, interoffice transmission facilities, AIN services and data bases, Operations Support Systems, and unbundled operator services and directory assistance for purchases of the unbundled local switch that would permit customized routing to CLEC or third-party OS/DA platforms -- are not currently available from NYT. For the network elements that NYT does currently furnish -- the loop and the NID (which is

bundled with the loop) -- NYT offers no evidence that these elements are provided at parity with its provision of such items to itself or its retail customers, and these elements cannot be obtained on a timely basis by CLECs who seek to enter the market on a mass market basis.

NYT has not demonstrated that it is providing unbundled elements on a nondiscriminatory basis and has produced no information on the intervals within which it provides such capabilities to itself. NYT generally asserts that its facilities and elements are offered on a nondiscriminatory basis, but it has provided no evidence that supports such a claim. Indeed, NYT acknowledges that such measures are under development, but it admits that these measures will not be available for several months. Tr. 260 (Coffey).

1. LOCAL LOOPS

See Unbundled Local Loops, Checklist item IV.

2. NETWORK INTERFACE SERVICES

See Unbundled Local Loops, Checklist item IV.

3. LOCAL AND TANDEM SWITCHING

See Unbundled Local Switching, Checklist item VI.

4. INTEROFFICE TRANSMISSION FACILITIES

See Unbundled Local Transport, Checklist item V.

5. SIGNALING AND CALL-RELATED DATABASES

See Signaling and Call-Related Databases, Checklist item X.

6. OPERATIONS SUPPORT SYSTEMS

NYT does not currently provide CLECs with commercially reasonable and nondiscriminatory access to its OSSs. The terms and conditions under which NYT "offers" access to its OSSs in the SGAT are so unreasonable and discriminatory that they preclude any finding that NYT is in compliance with the checklist, or that the SGAT's provisions concerning OSS are lawful. Moreover, as shown in the discussion of Checklist item 14 (Resale) below, the evidence overwhelmingly demonstrates that NYT is not providing parity access to its OSSs as required under the 1996 Act.

NYT's interfaces are not operationally ready to provide parity access to its OSSs, on commercially reasonable terms, to CLECs seeking to order UNEs. The defects in NYT's OSSs in the context of the purchase of UNEs (which do not include the deficiencies in its OSSs in the context of resale, which are discussed under Checklist item 14 on resale) include the following:

- CLECs cannot currently order UNEs (with the possible exception of SVGALs) through NYT's interfaces. Tr. 382 (Miller), 464 (DeJoy), 473 (Wehnes).
- NYT's interfaces require substantial manual processing and human intervention by NYT. Miller, ¶¶ 10, 15, 37; Hou, pp. 32-33; Spivy, ¶ 65.
- CLECs cannot use NYT's DCAS gateway to submit trouble reports for UNEs. Tr. 469 (Haines), 473-474 (Wehnes); Miller, ¶ 21.
- NYT has not shown that it can -- or does -- provide CLECs with necessary billing functions for UNEs. Miller, ¶¶ 23-24; Spivy, ¶¶ 92-93; Halloran, pp. 12-13.

a. The Ability Of CLECs To Have Commercially Reasonable And Nondiscriminatory Access To OSSs In A Commercially Reasonable Manner Is Vital To The Establishment of Effective Local Competition.

The ability to interact successfully with NYT's OSSs on a nondiscriminatory basis is essential to the emergence of effective competition in the local exchange market. In order to compete successfully, a CLEC must be able to obtain the information in the incumbent's (NYT's) OSSs with no less availability, accuracy, timeliness, and reliability than that experienced by NYT's personnel in its retail operation. Hou, pp. 4-5; Kennedy, pp. 3-4; Spivy, ¶ 6.

The FCC has recognized the critical competitive importance of nondiscriminatory and commercially reasonable access to OSSs:

> Much of the information maintained by these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services. Without access to review, *inter alia*, available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent. Other information, such as the facilities and services assigned to a particular customer, is necessary to a competing carrier's ability to provision and offer competing services to incumbent LEC customers. Finally, if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus providing nondiscriminatory access to these support systems functions, which would include access to the

information such systems contain, is vital to creating opportunities for meaningful competition.[16]

The FCC required that by January 1, 1997, each incumbent LEC -- including NYT -- must provide "at least equivalent electronic access" to requesting CLECs in connection with UNEs or resale services to the extent that the ILEC provides electronic pre-ordering, ordering, provisioning, maintenance and repair, or billing to itself.[17] Thus, the "comparability of access" standard that NYT proposes (Miller, ¶¶ 32-41) is insufficient. Indeed, it is meaningless. Full parity of access is required, which the dictionary defines as "equality, as in amount, status or value."[18] See also Hou, pp. 14-15. The Act and the FCC's rules require that CLEC representatives using NYT's OSSs have the same experience (in terms of accuracy, timeliness, reliability, and quality) as NYT representatives using the system -- so that the experiences of CLEC customers be equivalent to those of NYT retail customers.

The first prerequisite to establishing that NYT is providing nondiscriminatory access to its OSSs is to show that its proposed OSS interfaces are operationally ready to provide commercially reasonable OSS support. This requires that NYT's interfaces must be able to handle the demands of CLECs in

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[16]First Report and Order, ¶ 518 (footnote omitted; emphasis added); see id., ¶¶ 516, 521-522.

[17]Second Order on Reconsideration, ¶ 9.

[18]American Heritage Dictionary, Second College Edition, p. 903 (1982).

commercially reasonable quantities and on a nondiscriminatory basis. Operational readiness is achieved only when the carrier's systems are demonstrably able to provide usable, reliable results in accordance with their intended function and design. Hou, pp. 7-8. Further, "commercially reasonable" OSS support requires NYT to provide CLECs access to electronic interfaces that are at least at parity with the support NYT provides for its own internal operations in terms of timeliness, accuracy, reliability, and quality, and that enable CLECs physically to provide services to subscribers in commercially significant quantities. Id., p. 7; Spivy, ¶¶ 33-34.

NYT readily admits that operations support systems are extremely complex. Tr. 457, 485 (Miller); Tr. 489 (Butler); Miller, p. 10; see also Spivy, ¶ 7. Consequently, NYT can achieve operational readiness only through comprehensive processes that require close collaboration between NYT and CLECs. The process involves many steps, ranging from documentation of systems requirements to a full range of testing of the interfaces. Hou, pp. 9-13; Halloran, p. 15; Spivy, ¶¶ 26-34. Thus, NYT's mere assertion that it "offers" interfaces does not demonstrate operational readiness. Hou, pp. 7-8; Spivy, ¶¶ 33-34.

2. NYT's OSS Interfaces Are Not Operationally Ready To Provide Parity Access To Its OSSs Or Commercially Reasonable Access To Its OSSs.

Applying these standards, NYT has plainly failed to show that it is providing CLECs with nondiscriminatory and commercially reasonable access to its OSSs. Indeed, the evidence shows that NYT is not even "generally offering" nondiscriminatory access to its OSSs under the SGAT within the meaning of Section 252(f).[19] Section 5.9 of the SGAT, which discusses OSS in the context of UNEs, is simply a cursory outline that does not even describe the interfaces that NYT purports to offer. Instead, it asserts only that NYT "provides access" to CLECs to the functionalities of NYT's OSSs in connection with the purchase or UNEs or resold services (§ 5.9.1), and that access to OSSs will be through the Direct Customer Access System ("DCAS") gateway (§ 5.9.2). Although the SGAT states that NYT provides specified functionalities through DCAS for pre-ordering, ordering, provisioning, maintenance/repair, and billing (§ 5.9.3), it offers no details or specifications regarding the availability, accuracy, functions or reliability of such functions.

These provisions are plainly insufficient to satisfy the requirements of Section 252(f). The Commission may approve the SGAT only if NYT shows that it can be implemented, i.e., is "generally available," in a realistic way. NYT's SGAT, however,

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[19]Although the SGAT "offers" OSS as an unbundled network element, NYT admits that no CLEC has purchased OSS as an element. See Garzillo, ¶¶ 15, 51; Tr. 552-553 (Garzillo).

does not offer a single parameter or standard by which the Commission could determine whether NYT is providing nondiscriminatory and commercially reasonable access to its OSSs.

Furthermore, the record clearly shows that NYT in fact does not currently provide CLECs with the required access. With one exception, the deficiencies in NYT's OSS that deny parity of access to resellers, which are described in detail below, relate equally to the purchase of UNEs. Hou, pp. 31-32; Halloran, p. 12; Tr. 464 (DeJoy).[20] In addition, NYT OSS access for UNEs is deficient in several other respects:

First, NYT admits that, with the possible exception of SVGALs, CLECs cannot order UNEs through its existing interfaces. Tr. 382 (Miller). CLECs such as TCG and WorldCom have been required to submit orders for loops by sending facsimiles to NYT. Tr. 464 (DeJoy); Tr. 473 (Wehnes).[21] NYT's assertion (Tr. 382 (Miller)) that it will implement "this week" or "this month" a

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[20]The problems described in the discussion of resale below with respect to NYT's Electronic Data Interchange ("EDI") interface do not apply to UNEs, because NYT offers EDI only to resellers -- even though industry guidelines recommend that EDI also be used for ordering customer-specific UNEs, and even though NYT agreed in February 1997 to the use of EDI as a long-term solution for preordering, ordering, and provisioning for both resale and UNEs. Hou, p. 32; Halloran, pp. 14-15; Miller, ¶ 7.

[21]As a result of this process, TCG is required to enter all of its orders twice -- once into its own system and once into the NYT system. Tr. 467-468 (DeJoy). This "dual data entry" problem is described in greater detail below in the context of resale. Moreover, one-half of the applications within the "DCAS carrier" that TCG uses in pre-ordering -- including service address validation -- are not functional, which delays provisioning to the CLECs' customers. Tr. 465-466 (DeJoy).

mechanism that will give CLECs the ability to order loops, transport, and switch elements through the interfaces simply demonstrates NYT's lack of operational readiness.[22]

Second, NYT has not developed standards for determining whether the OSS services it "offers" to CLECs in connection with the purchase of UNEs are at parity with similar services or capabilities that NYT provides to its end users and itself. Despite Mr. Coffey's claim that NYT has developed "comparability measurements" for UNEs, and will provide such information in reports to the CLECs (Coffey, ¶¶ 3, 21-28, and Exhibits 2-3), NYT acknowledged that these reports "are currently being programmed and are not yet available." NYT Response to Staff-NYT-3.1. And even those proposed reports fail to identify many of the factors needed to determine whether CLECs can obtain parity access, including specific DMOQs that the Commission directed the parties to establish in the AT&T/NYT arbitration proceeding. Hou, p. 54.

Third, as in the case of resale, the interfaces NYT "offers" to support CLECs' purchase of UNEs require substantial human (manual) processing and intervention. NYT frankly admits that several pre-ordering functionalities for UNEs require manual processing by a NYT representative, which could create substantial problems for CLECs and their customers. Miller, ¶¶ 10, 15, 37; Hou, pp. 32-33; Spivy, ¶ 65. NYT's UNE ordering

[22]Even if NYT has implemented the mechanism that it described, the CLECs' ability to order loops, transport, and switch elements is questionable, given NYT's refusal to provide training on how to order UNEs. Hou, pp. 32-33; Halloran, p. 13.

processes also require manual intervention, which makes it significantly more difficult for CLECs to serve customers because of the slower response times, higher likelihood of error, and overall greater costs caused by manual intervention. Hou, p. 34; Miller, ¶ 15. It does not appear that NYT intends to eliminate all such manual processing (and its attendant anticompetitive effects) until at least the end of 1997. Hou, p. 34. Unless and until CLECs have direct electronic access to all important OSS functions, NYT's OSSs are discriminatory. Spivy, ¶ 65.

Fourth, NYT's DCAS gateway cannot currently be used to report troubles concerning UNEs. Tr. 469 (Haines); Tr. 473-474 (Wehnes); Miller, ¶ 21; Hou, p. 33. Instead, CLECs must report troubles manually or by phone -- a time-consuming process -- even though CLECs have asked NYT for two years to enable them to use the DCAS gateway to make such reports. Tr. 469 (Haines); Tr. 473-474 (Wehnes). NYT acknowledges that it does not have fully electronic systems to support repair and maintenance functions for UNEs, and it has provided no specifics regarding its alleged plans to provide full electronic processing "in the near future." Miller, ¶ 21; Hou, p. 33; Spivy, ¶ 83.

Finally, there is no evidence that NYT can provide CLECs with parity billing functions for UNEs. Because the concept of unbundling is new, accounting for the use of each UNE -- each of which has its own billing structure -- will require significant operational and systems planning and coordination between NYT and the CLECs. However, the needed planning and

coordination are still in the discussion stage. Halloran, pp. 12-13. In fact, NYT's Mr. Miller makes no claim that NYT has a system in place for billing UNEs. Miller, ¶¶ 23-27; Spivy, ¶¶ 92-93. Indeed, the evidence showed that NYT's systems are not operationally ready to perform billing functions for CLECs. LCI, a reseller, testified that NYT has persistently failed to provide LCI with call record information on a timely basis. Wajsgras, ¶¶ 21-24. MCI testified that, due to limitations in NYT's billing system, MCI will receive 14 separate bills from NYT, rather than one bill -- an inefficient and wasteful process. Spivy, ¶ 92.

7. OPERATOR SERVICES AND DIRECTORY ASSISTANCE FACILITIES

NYT does not currently provide purchasers of unbundled elements with customized routing of OS/DA calls to the CLEC or third party OS/DA platforms. Halloran, p. 24; Tr. 602-03 (Halloran). NYT claims that it is providing unbundled OS/DA to CLECs, but those capabilities (particularly the capabilities identified in the SGAT) are limited to the use of NYT's own operator services and directory assistance services. NYT currently cannot route OS/DA calls to the CLEC's or third party OS/DA platforms. Id. However, a CLEC's ability to offer its own OS/DA services is an important marketing tool to permit a CLEC to distinguish itself in the marketplace. NYT's failure to make customized routing available for purchasers of the unbundled network elements undercuts the attractiveness of the unbundled network elements as a market offering. In addition, NYT has just

advised AT&T that NYT will not provide its stand-alone OS/DA platform and offer unbranding and rebranding to customers that also buy NYT's unbundled switching element. It will, however, provide unbranded and rebranded services to customers that provide their own switching. This is patently discriminatory.

There are equally serious deficiencies in NYT's offering of OS/DA services to resale customers. These issues are discussed under the heading of Checklist item VII -- 911, Directory Assistance, Operator Call Completion Services.

CHECKLIST ITEM III: POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY

Section 271(c)(2)(B)(iii) requires NYT to offer "non-discriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [NYT] at just and reasonable rates. . . ." NYT has not fulfilled this requirement in at least four major respects:

- NYT has offered access to pathways pursuant to agreements that plainly discriminate against CLECs;
- NYT has not shown the terms and conditions on which all of the pathways that it owns or controls are offered, consistent with Section 271. In particular, NYT has not demonstrated that the terms, conditions, and rates for access to ducts and conduits controlled by its wholly-owned subsidiary Empire City Subway Company ("Empire City") comply with Section 271;
- NYT has not demonstrated that it has established a process that will afford CLECs access to all NYT-controlled pathways on a timely, commercially reasonable basis that is at parity with the access NYT affords itself; and

- NYT has not shown, or attempted to show, that its rates for access to pathways are just and reasonable, as required by Section 271 and by other provisions of the 1996 Act.

a. NYT Does Not Offer Access To Pathways On Nondiscriminatory Terms And Conditions.

The terms and conditions of NYT's standard agreements for poles, conduits, and private rights-of-way contain provisions that fundamentally discriminate against CLECs. Among other things, these standard agreements contain "but for" clauses that require CLECs, and CLECs alone, to pay for certain costs incurred because of NYT's need for space in or on pathways. Madden, pp. 25-26; Rowland, p. 3. These clauses do not impose reciprocal, or even similar, obligations on NYT. Id. NYT's standard agreements also (i) require CLECs to indemnify NYT for damage to property or persons caused by a CLEC's use of, or by CLEC employees performing work in, NYT pathways (Madden, pp. 27-28; Rowland, p. 3); (ii) permit NYT to revoke a CLEC's license (i.e., authority) to use a pathway after one year (Madden, p. 28; Rowland, p. 3); and (iii) provide that NYT may determine in its discretion the order in which to proceed when multiple license applications for pathway access are submitted simultaneously (Madden, pp. 28-29; Rowland, p. 3). These provisions do not impose reciprocal obligations on NYT. Madden, pp. 27-29; Rowland, p. 3. NYT made no attempt to explain these provisions.

NYT also discriminates against CLECs in other ways. When questioned at the conference about maps and records, NYT openly acknowledged that the "straight line" drawings that it